

of the Army will designate a DA official to perform the functions of the official named as an ADO. If the Secretary of the Army or the Director of EEO is named as an ADO merely by virtue of his or her position, then he or she may continue to process the complaint.

Subpart H—Witnesses, Representation, Administrative Procedures, and Reports

§ 588.70 Arranging for witnesses.

(a) Army military and civilian personnel requested as witnesses by the EEO officer, the investigator, or the EEOC complaints examiner will be made available unless it is administratively impractical. If a needed Army witness is not under local administrative control, the Activity Commander or the EEO officer may ask the witness' commander to make that person available. Denials will be promptly referred to the EEO officer of the next higher level command of the requested witness. If the denial is not justified, the next higher level command will direct the organization to make the witness available.

(b) If a needed witness is employed by another Federal agency or has left Federal employment, he or she will be contacted by the EEO officer. The EEO officer will make every reasonable effort to ensure the presence of the witness. If the witness refuses to appear, the EEO officer will refer the matter to the investigator or the complaints examiner.

(c) A Federal employee is in an official duty status when he or she appears as a witness or is required to provide a statement under oath or affirmation.

§ 588.71 Complainant's and class agent's representative.

(a) A complainant or an agent in a class complaint has the right to be accompanied, represented, and advised by a representative of his or her own choice at any stage of the complaint process, including the informal counseling stage. No employee or military member is obligated to serve as a representative.

(b) The complainant or the class agent will designate the representative

in writing. Any change will be reported in writing to the EEO officer, with copies to the counselor, investigator, or complaints examiner, as appropriate.

(c) The Army must be notified when an attorney is retained to represent a complainant or class agent. Written submissions to the Army that are signed by the representative are deemed to constitute notice of representation. This notice is required to establish the attorney's eligibility to claim fees and/or costs.

(d) After consulting with the SJA or senior legal officer of the servicing legal office, the Activity Commander or his or her designee may deny permission to an Army employee or military member to serve as a representative if this would constitute a conflict of interest. This denial will be made in a letter to the complainant stating the reasons. The letter must tell the complainant that an appeal of the denial may be filed with the EEO officer within 5 working days after receipt of the denial. The denial and the appeal are then sent immediately to the Director, EEOCCRA, ATTN: SFCR, WASH DC 20310-1813, for decision.

§ 588.72 Representing the Army in individual complaints.

(a) The Army is represented in complaint proceedings by the labor counselor (a judge advocate or a civilian attorney from the SJA or legal office). The labor counselor's role is to ensure that the Army's position is based on a sound legal theory and supported by competent evidence at both the investigative and hearing stages. The labor counselor does not represent the ADO.

(b) The labor counselor may have a CPO technical adviser at the hearing.

§ 588.73 Representing the Army in class complaints.

(a) The EEO counselor may seek legal advice from the servicing legal office during the informal stage of class discrimination complaints after consulting with his or her EEO officer.

(b) When an individual or class complaint is filed formally, the Activity Commander will appoint an Army judge advocate or civilian attorney as the labor counselor to represent the

Department of the Army, DoD

§ 588.76

Army at the activity level as described in §§ 588.2 and 588.3.

§ 588.74 Using official time.

Under 29 CFR 1613.214, complainants, agents, and representatives who are Army employees have the right to a reasonable amount of duty time to prepare and present a complaint filed under this regulation. Employees must arrange in advance with their supervisors to use this duty time. Disagreements as to what is "reasonable" time are resolved by the Activity Commander or a designee. "Reasonable duty time" includes all time actually spent in meetings and hearings required by an Army or EEOC official plus a reasonable amount of preparation time. Reasonable time for preparation purposes is generally defined in terms of hours rather than days, weeks, or months.

§ 588.75 Hearing arrangements.

(a) Expenses incurred in the administrative processing of an EEO complaint will be borne by the activity against which the complaint is lodged.

(b) The servicing activity EEO officer will ensure that a court reporter is provided for the hearing and that the transcripts are sent directly to the EEOC complaints examiner. Use of Army employees to transcribe hearings is prohibited by the EEOC. However, interservice support agreements with the Navy and Air Force may be used instead of contracting for such services.

(c) All requests to the EEOC for a hearing will contain instructions that the completed case file, with all copies of the transcript and the complaints examiner's recommended decision is to be sent to the Director, EEOCRA, ATTN: SFCR, WASH DC 20310-1813. If the examiner erroneously transmits the case file to the activity EEO officer, the case must be returned immediately to EEOC by registered mail with instructions for transmission to the Director, EEOCRA.

§ 588.76 Complaint file.

(a) The EEO officer will compile a complaint file that will include all documents pertinent to the complaint except for the Army decision regarding action against the ADO.

(b) The file will not contain any document that has not been made available to the complainant or his or her representative.

(c) The file will be indexed. The file will also be tabbed in reverse chronological order and will contain legible copies of the following documents, when applicable, and in the order listed below:

(1) Tab O.

(i) EEO Complaint Data Sheet: DA Form 5493-R (Individual Complaint Data Sheet) or DA Form 5494-R (Class Complaint Data Sheet).

(ii) Complaint Chronology Sheet: DA Form 5495-R (Chronology of Individual EEO Complaint) or DA Form 5496-R (Chronology of Class EEO Complaints).

(iii) DA Form 5497-R (Disposition of Complaint of Discrimination).

(2) Tab N.

(i) Final Army decision.

(ii) Return receipt or other evidence of complainant's receipt of final Army decision.

(3) Tab M. EEOC complaints examiner's report of findings, analysis, and recommendations.

(4) Tab L. Verbatim transcript of EEOC hearing and all exhibits.

(5) Tab K. EEO officer's letter to EEOC requesting assignment of a complaints examiner.

(6) Tab J.

Request for Army decision without a hearing.

Request for hearing before EEOC.

(7) Tab I.

(i) Proposed disposition.

(ii) Notice to complainant of adoption of proposed disposition as Army final decision if complainant has failed to respond within 15 days.

(8) Tab H.

(i) Record of adjustment conference.

(ii) Settlement agreement is signed by all parties and documents showing implementation.

(iii) Written withdrawal of complaint by complainant, if applicable.

(9) Tab G.

(i) Record of transmittal of USACARA ROI to activity.

(ii) Record of transmittal of USACARA ROI to complainant.

(10) Tab F. Entire investigator's report including exhibits tabbed as received from the investigator.